

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re FLINT WATER CASES

Case No. 5:16-cv-10444-JEL-MKM
(consolidated)

Hon. Judith E. Levy
Mag. Mona K. Majzoub

**APPLICATION FOR REAPPOINTMENT AS
INTERIM CO-LEAD CLASS COUNSEL**

Theodore Leopold of Cohen Milstein Sellers & Toll PLLC and Michael Pitt of Pitt McGehee Palmer & Rivers PC remain uniquely qualified to serve as Interim Co-Lead Class Counsel. Since their reappointment last year, Interim Co-Lead Class Counsel have continued to vigorously and effectively prosecute this action. As a result of their experience, resources, and well-developed knowledge of the factual record, legal issues, and status of critical negotiations related to discovery and settlement, they remain best positioned to bring the case to a swift and just conclusion.

Legal Standard

Federal courts rely on the same factors to appoint interim and final class counsel:

- (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class

Fed. R. Civ. P. 23(g)(1)(A). The Court "may also consider other matter[s] pertinent to counsel's ability to fairly and adequately represent the interests of the class." *In re Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005); *accord* Fed. R. Civ.

P. 23(g)(1)(B). Weighing all the relevant considerations, it is clear that Mr. Leopold and Mr. Pitt are in the best position to lead this case.¹

I. The Rule 23(g)(1)(A) Factors Support Mr. Leopold's and Mr. Pitt's Continued Leadership

Identifying and Investigating Claims. Over the past year, Messrs. Leopold and Pitt, together with attorneys on the Plaintiffs' Executive Committee (PEC)² and under their leadership, have continued to investigate the claims in this case, marching quickly and efficiently through fact discovery. In the past year, the class leadership team has:

- Negotiated document custodians and search terms, and ultimately obtained and reviewed hundreds of thousands of Defendants' documents;
- Used subpoenas to collect and review documents from third parties;
- Collected and reviewed class representatives' documents;
- Taken eight depositions and prepared for several more in December and January;
- Defended six depositions;
- Worked with experts; and

¹ This Application incorporates Mr. Leopold's and Mr. Pitt's earlier leadership applications by reference, *see generally* ECF Nos. 136, 690, and focuses on their accomplishments since the Court renewed their standing as Interim Co-Lead Class Counsel on December 7, 2018, *see* ECF No. 696.

² The case has benefitted tremendously from Interim Co-Lead Class Counsel's relationships with and the contributions of the PEC: Paul Novak, Teresa Bingman, Esther Berezofsky, Peretz Bronstein, and Steve Morrissey.

- Met and conferred repeatedly with Defendants to ensure that discovery proceeds as smoothly as possible.

Counsel's Experience. In recognition of Mr. Leopold's experience litigating environmental cases successfully, Cohen Milstein was declared a "Winner – Elite Trial Lawyers – Environmental Protection" by the National Law Journal in 2019.³

Counsel's Knowledge of the Law. Over the past year, Messrs. Leopold and Pitt further demonstrated their understanding of the governing law by leading a team of lawyers to (among other things):

- Successfully oppose Defendants' motion to strike class allegations;
- Litigate appeals of the Court's motion to dismiss decisions in the Sixth Circuit; and
- Craft a class certification strategy and gather the discovery necessary to implement it.

Counsel's Resources. Messrs. Leopold and Pitt stand ready to contribute both their unparalleled institutional knowledge, time, and monetary resources to prosecute this action. Because Messrs. Leopold and Pitt have been leading the class litigation for several years, they are keenly familiar with the details and unique dynamics of this case. That institutional knowledge will be invaluable to the class in further litigation and settlement discussions. In addition, Interim Co-Lead Class

³ Lisa Helem, *The 2019 Elite Trial Lawyers: Our Winners*, National Law Journal (July 23, 2019), <https://www.law.com/nationallawjournal/2019/07/23/the-2019-elite-trial-lawyers-our-winners/>.

Counsel and the PEC have established a litigation fund to ensure that the case has adequate monetary resources. Complex class actions such as this require substantial expert analysis and discovery (in addition to costs associated with mediation and the Special Master). Messrs. Leopold and Pitt and the PEC have already made substantial payments to the litigation fund, and they are ready and willing to make additional contributions to obtain justice for Flint residents.

II. Other Factors Support Mr. Leopold’s and Mr. Pitt’s Continued Leadership

Several additional considerations militate in favor of Mr. Leopold’s and Mr. Pitt’s continued leadership. *See In re Delphi ERISA Litig.*, 230 F.R.D. at 498 (explaining that, in appointing lead counsel, courts may consider “matter[s] pertinent to counsel’s ability to fairly and adequately represent the interests of the class”); *accord* Fed. R. Civ. P. 23(g)(1)(B). First, as this Court has recognized at several status conferences, the parties and the community have an interest in moving expeditiously through this litigation. Because Messrs. Leopold and Pitt and the PEC have already crafted a long-term legal strategy—and largely implemented it—they are best positioned to move forward with discovery and class certification.

Second, Messrs. Leopold and Pitt have made significant progress in settlement negotiations. Under their leadership, Class Plaintiffs have:

- Submitted multiple detailed mediation statements and provided updates to the mediators when discovery revealed significant new evidence;

- Successfully moved for the appointment of Subclass Settlement Counsel (SCC) to ensure that any settlement funds are allocated fairly; and
- Worked diligently to familiarize SCC with the details of this case.

Because Interim Co-Lead Class Counsel are deeply involved in intricate, fast-moving, resource-intensive settlement talks, a change in class leadership at this juncture could cause significant delays in the settlement process.

Finally, Messrs. Leopold and Pitt have established productive working relationships with other attorneys and Flint residents. Since this case began, Interim Co-Lead Class Counsel have worked closely with the PEC and with plaintiffs' lawyers in the related actions to ensure that litigation runs as smoothly as possible. Likewise, Interim Co-Lead Class Counsel has developed relationships with defense counsel that will serve them in future negotiations. Finally, Mr. Pitt and several other attorneys working under the current class leadership structure—a diverse team that includes Flint residents with deep ties to the community—have engaged leaders and advocacy groups in Flint to work with the community.

CONCLUSION

For the foregoing reasons, Class Plaintiffs respectfully request that the Court reappoint Theodore Leopold and Michael Pitt as Interim Co-Lead Class Counsel.

Dated: December 18, 2019

/s/ Theodore J. Leopold

Theodore J. Leopold
COHEN MILSTEIN SELLERS & TOLL PLLC
2925 PGA Boulevard
Suite 220
Palm Beach Gardens, FL 33410
(561) 515-1400 Telephone
tleopold@cohenmilstein.com

Joseph M. Sellers
Kit A. Pierson
Emmy L. Levens
Jessica B. Weiner
Alison S. Deich
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW
Suite 500
Washington, DC 20005
(202) 408-4600 Telephone
jsellers@cohenmilstein.com
kpierson@cohenmilstein.com
elevens@cohenmilstein.com
jweiner@cohenmilstein.com
adeich@cohenmilstein.com

Vineet Bhatia
Shawn Raymond
SUSMAN GODFREY, L.L.P.
1000 Louisiana Street
Suite 5100
Houston, TX 77002
(713) 651-3666 Telephone
vbhatia@susmangodfrey.com
sraymond@susmangodfrey.com

Respectfully submitted,

/s/ Michael L. Pitt

Michael L. Pitt
Cary S. McGehee
PITT MCGEHEE PALMER & RIVERS, P.C.
117 West 4th Street
Suite 200
Royal Oak, MI 48067
(248) 398-9800 Telephone
mpitt@pittlawpc.com
cmcgehee@pittlawpc.com

Paul Novak (P39524)
Diana Gjonaj (P74637)
Gregory Stamatopoulos (P74199)
WEITZ & LUXENBERG, P.C.
3011 West Grand Boulevard
Suite 2150
Detroit, MI 48226
(313) 800-4170 Telephone
pnovak@weitzlux.com
dgjonaj@weitzlux.com
gstamatopoulos@weitzlux.com

Robin L. Greenwald
WEITZ & LUXENBERG, P.C.
700 Broadway
New York, NY 10003
(212) 558-5500 Telephone
rgreenwald@weitzlux.com

Esther E. Berezofsky
MOTLEY RICE LLC
210 Lake Drive East
Suite 101
Cherry Hill, NJ 08002
(856) 667-0500 Telephone

Stephen Morrissey
Jordan Connors
SUSMAN GODFREY, L.L.P.
1201 Third Ave.
Suite 3800
Seattle, WA 98101
(206) 516-3880 Telephone
smorrissey@susmangodfrey.com
jconnors@susmangodfrey.com

Peretz Bronstein
Shimon Yiftach
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
60 East 42nd Street
Suite 4600
New York, NY 10165
(212) 697-6484 Telephone
peretz@bgandg.com
shimony@bgandg.com

Bradford M. Berry
Anson C. Asaka
NAACP
4805 Mt. Hope Dr.
Baltimore, MD 21215
(410) 580-5777 Telephone
bberry@naacpnet.org
aasaka@naacpnet.org

Kathryn P. Hoek
SUSMAN GODFREY, L.L.P.
1901 Avenue of the Stars
Suite 950
Los Angeles, CA 90067
(310) 789-3100 Telephone
khoek@susmangodfrey.com

Neal H. Weinfield
THE DEDENDUM GROUP

eberezofsky@motleyrice.com

Teresa Caine Bingman (P56807)
THE LAW OFFICES OF TERESA A. BINGMAN, PLLC
120 N. Washington Square
Suite 327
Lansing, MI 48933
(877) 957-7077 Telephone
tbingman@tbingmanlaw.com

William Goodman (P14173)
Julie H. Hurwitz (P34720)
Kathryn Bruner James (P71374)
GOODMAN & HURWITZ PC
1394 E. Jefferson Ave.
Detroit, MI 48207
(313) 567-6170 Telephone
bgoodman@goodmanhurwitz.com
jhurwitz@goodmanhurwitz.com
kjames@goodmanhurwitz.com

Deborah A. LaBelle (P31595)
LAW OFFICES OF DEBORAH A. LABELLE
221 N. Main St.
Suite 300
Ann Arbor, MI 48104 (734)
996-5620 Telephone
deblabelle@aol.com

Trachelle C. Young (P63330)
TRACHELLE C. YOUNG & ASSOCIATES PLLC
2501 N. Saginaw St.
Flint, MI 48505
(810) 239-6302 Telephone
trachelleyoung@gmail.com

(312) 613-0800 Telephone
nhw@dedendumgroup.com

Cirilo Martinez (P65074)
**LAW OFFICE OF CIRILO
MARTINEZ, PLLC**
3010 Lovers Lane
Kalamazoo, MI 49001
(269) 342-1112 Telephone
martinez_cirilo@hotmail.com
David J. Shea
SHEA AIELLO, PLLC
26100 American Drive
2nd Floor
Southfield, MI 48034
(248) 354-0224 Telephone
david.shea@sadplaw.com

Mark L. McAlpine (P35583)
Jayson E. Blake (P56128)
MCALPINE PC
3201 University Drive
Suite 100
Auburn Hills, MI 48326
(248) 373-3700 Telephone
mlmcalpine@mcalpinelawfirm.com
jeb Blake@mcalpinelawfirm.com

Brian McKeen (P34123)
Claire Vergara (P77654)
McKEEN & ASSOCIATES, PC
645 Griswold Street
Suite 4200
Detroit, MI 48226
(313) 961-4400 Telephone
bjmckeen@mckeenassociates.com
cvergara@mckeenassociates.com

Cynthia M. Lindsey (P37575)
Shermane T. Sealey (P32851)
**CYNTHIA M. LINDSEY &
ASSOCIATES, PLLC**
8900 E. Jefferson Avenue
Suite 612
Detroit, MI 48214
(248) 766-0797 Telephone
cynthia@cmlindseylaw.com
shermane@cmlindseylaw.com

Andrew P. Abood (P43366)
ABOOD LAW FIRM
246 East Saginaw Street
Suite One
East Lansing, Michigan 48823
(517) 332-5900 Telephone
andrew@aboodlaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was filed with the U.S. District Court through the ECF filing system and that all parties to the above case were served via the ECF filing system on December 18, 2019.

Dated: December 18, 2019

/s/ Emmy L. Levens

Emmy L. Levens
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW
Suite 500
Washington, DC 20005
(202) 408-4600
elevens@cohenmilstein.com